

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. III

SERVICE TAX APPEAL No.41031 of 2018

[Arising out of Order-in-Appeal No.MAD-CEX-000-APP-005-2018 dated 29.01.2018 passed by the Commissioner of GST & Central Excise (Appeals-II), Circuit Office, Madurai]

M/s.P. Natesan & Co.

No.9, Dr. Sevaliya Sivaji Ganesan Nagar, III Street,
EVR Road,
Dindigul 624 001.

Appellant

Vs

The Commissioner of GST & Central Excise,

Madurai Commissionerate,
Central Revenue Buildings,
No.4, Lal Bhadur Shastri Road, Bibikulam,
Madurai 625 002.

Respondent

APPEARANCE:

Shri N.K. Bharath Kumar, Consultant
For the Appellant

Shri R. Rajaraman, Assistant Commissioner (AR)
For the Respondent

CORAM:

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Date of Hearing : 14.12.2022
Date of Decision: 14.12.2022

FINAL ORDER No. 40373 / 2022

Brief facts of the case are that appellant is engaged in providing Works Contract Services and is registered with the Department for providing such services. The appellant provided works contract service

to Military Engineer Services, INS Agrani, Red Fields Post, Coimbatore. They undertook and completed such services during the period 2015-16 and then filed refund claim for refund of the service tax paid by them in terms of Section 102 of the Finance Act, 1994 which exempted services provided to Government for the period 01.04.2015 to 29.02.2016. After due process of law, the original authority rejected the refund claim. Against this order, the appellant preferred appeal before Commissioner (Appeals) who upheld the order of rejection of refund by the original authority. Hence this appeal.

2. On behalf of the appellant, Ld. Consultant Shri N.K. Bharath Kumar appeared and argued the matter. He adverted to Section 102 which was inserted by Finance Act, 2016 and submitted that the contractor who has provided works contract services is not liable to pay service tax on such services if such services are provided to the Government during the period 01.04.2015 to 29.02.2016. As per the said section, the contract has to be entered into before 01.03.2015. The lower authority has rejected the refund claim stating that though the tender was opened by the office of the Military Engineer Services on 23.01.2015, the contract was signed only on 19.03.2015; therefore the exemption is not eligible. The details of the dates and event are furnished as per the following chart :

S.No	Date	Particulars
1	23-01-2015	Tender Opened
2	19-03-2015	Acceptance & Allotment of Contract with same amount
3	30-03-2015	Date of Handing over of site
4	08-03-2015	Directorate of Contract Management (MES) Confirming in Para No. 2(a) that, "therefore for all tenders received on and after 01 Mar 2015, the liability of Service Tax rests with the contractor" . This implies that when the tender is received prior to 01 Mar 2015, service tax liability rests with recipient of service.
5	09-09-2016	Letter from MES, New Delhi – Refund of Service Tax Consequent to Union Budget 2016-17 wherein Para 3, it is mentioned that, - "In view of above it now becomes Govt liability to get the refund from contractors and they in turn getting refund from Service Tax Deptt."
6	17-10-2016	Directorate of Contract Management (MES), New Delhi – Refund of Service Tax Consequent to Union Budget 2016-17 – wherein Para 3(a) it is mentioned that – "The contractor will process refund cases to the Service Tax Deptt. While processing refund, they will intimate clearly that this amount has already been reimbursed to them from MES.... and the refund be directly credited to the acct of the GE/GE(I)/AGE(I). The acct no. of the GE/GE(I)/AGE(I) shall be intimated by them....."
7	-do-	In Para 3(e), it is mentioned that The contractor who fails to process refund with Service Tax Deptt. within the time limit, shall be responsible for the consequences. Deptt. Shall recover the Service Tax amount reimbursed to him from any amount payable to him and if not available then MRO.
8	26-10-2016	Instruction Letter from New Delhi to Chief Engineer wherein it is mentioned in Para 3 that "..... It has already been mentioned that all the documents for refund filed in Service Tax Deptt shall be submitted by the contractor to GE. Thus GEs also can approach the Service Tax Deptt along with application filed by the contractor and affidavits etc. and monitor the refund as suggested by you.
9	27-12-2016	Letter to the appellant from Asst Garrison Engineer (I) seeking update on present position of processing the refund
10	28-03-2017	Letter to the appellant from Asst Garrison Engineer (I) seeking update on status of filing of appeal at Madurai upon rejection of refund at the adjudication level.
11	20-10-2017	Final Notice to the appellant on submission of required details to department for processing failing which, recovery from the dues shall be effected based on the instruction received from HEA.
12	07-08-2018	Communication of Bank Account Details to the Service Tax department by Asst Garrison Engineer (I), Coimbatore with copy to appellant for getting the refund in their own bank account.

3. On the basis of the above chart, Ld. Consultant submitted that there is no variation between the tender amount and the contract entered into between the parties. Therefore, the date of opening the tender which is the actual date of receiving the tender has to be

considered for allowing the exemption. He relied upon letter dated 08.05.2015 issued by the Directorate of Contract Management, Military Engineer Services, New Delhi which explained the applicability and exemption of service tax on Works Contracts Services. In para 2 (a) of said letter, it is stated as under :

"2. In accordance with the clarifications on the applicability of service tax promulgated vide GOI, Ministry of Finance (Department of Revenue) notification no. 6/2015 dated 01 Mar 2015 Service Tax has become leviable on all works contracts w.e.f 01 Apr 2015. The liability of paying service tax is on service provider ie contractor. Following is clarified in the context:-

(a) The above said order being issued on 01 Mar 15, therefore for all tenders received on and after 01 Mar 2015, the liability of Service Tax rests with the contractor. Accordingly, amount quoted in all contracts received on or after 01 Mar 15 shall be deemed to include the Service Tax and no reimbursement shall be made."

(emphasis supplied)

4. The Ld. Consultant submitted that as per sub-clause (a) of para-2 above, the date of receiving the tender has to be considered. He explained that as the appellant has been engaged for providing the works contract services by floating a tender and not merely entering into an agreement, the date of receiving the tender by the office of the Military Engineer Services (Government) ought to be considered for eligibility of the refund. The date of receiving the tender being 23.01.2015 which is much before 01.03.2015, the appellant is eligible for refund of service tax.

5. The Ld. A.R Shri R. Rajaraman appeared for the Department. He supported the findings of the original authority. Ld. A.R pointed out that Section 102 has a condition attached thereto for being eligible for the exemption of service tax. As per Section 102, the exemption is

available only if the contract has been entered prior to 01.03.2015. In the present case, it is an admitted fact that the contract has been signed and accepted by the Government (Military Engineer Services) on 19.03.2015 only. For this reason, the appellant is not eligible for the exemption. The original authority has discussed the same in para-11 of the OIO of the order. The authorities below have rightly rejected the refund claim.

6. Heard both sides.

7. The point that has to be analyzed is whether the appellant is eligible for refund on the basis of date of receiving the tender by the Government (Military Engineer Services). Undisputedly, the contract has been entered and signed on 19.03.2015. A contract comes into effect and binds the parties only when it is accepted. As per Section 2(b) of Indian Contract Act, 1872, acceptance is defined as "when the person to whom the proposal has been made signifies his assent thereto, the offer is accepted". Thus acceptance refers to the act of one party agreeing to the terms of proposed by another party. Merely receiving a tender or opening a tender cannot be considered as acceptance. There should be communication or intimation of the acceptance.

8. As per Section 102, the service provider is eligible for exemption of service tax only if contract is entered prior to 01.03.2015. The letter dt. 08.05.2015 reproduced above explaining the applicability of exemption from service tax issued by the Head office of the recipient

(Contract Management) cannot override the provisions of law. It has been expressly stated in Section 102 that the contract has to be entered prior to 01.03.2015 to avail the exemption. In this case, since the contract has been entered on 19.03.2015, the appellant is not eligible for exemption of service tax.

9. In view of the foregoing discussions, I hold that the authorities have rightly rejected the refund claim. Impugned order is upheld. Appeal is dismissed.

(dictated and pronounced in open court)

Sd/-
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)